

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

THOMAS DOUGLAS, as Administrator of the)
Estate of SEBERA GAYLE DOUGLAS,)
deceased,)

Plaintiff,)

vs.)

TMA FOREST PRODUCTS GROUP, et al.)

Defendants.)

**CASE NUMBER:
2:06-cv-188-WKW-SRW**

**DEFENDANT PACTIV CORPORATION'S
RESPONSE TO PLAINTIFF'S MOTION TO ALLOW
AMENDED COMPLAINT AND MOTION TO STRIKE**

Defendant Pactiv Corporation ("Pactiv") submits this response to Plaintiff's Motion to Allow Amended Complaint and moves to strike paragraph 110 of the proposed First Amended Complaint as it relates to Pactiv. In support thereof, Pactiv states as follows:

1. On April 24, 2006, Plaintiff filed a Motion to Allow Amended Complaint seeking to delete Counts 9 (spoliation) and 10 (homicide) as causes of action. Pactiv does not oppose Plaintiff's motion to the extent that it seeks to delete the spoliation and homicide counts, as neither count presents a recognized cause of action under Alabama law.

2. Plaintiff, however, continues to allege that "Plaintiffs are entitled to the benefit of the substantive law of the State of Alabama, including an inference of Defendants' guilt, culpability or awareness of their liability because of spoliation of evidence." First Am. Compl. at ¶ 110 (Emphasis added).

3. Plaintiff has alleged no basis for claims of spoliation against Pactiv.

4. Plaintiff merely alleges (at ¶¶ 108-09) that Louisiana-Pacific Corporation—not Pactiv—destroyed or disposed of material evidence and documents. *See also* Pl.’s Resp. to Defs.’ Mot. to Dismiss (attaching Affs. of Carlton Dukes and Connie Wayne Adams, which allege that Louisiana-Pacific, not Pactiv, may have destroyed relevant evidence).

WHEREFORE, Pactiv Corporation requests that the Court enter an order striking paragraph 110 of the proposed First Amended Complaint insofar as it alleges spoliation of the evidence as against Pactiv.

Respectfully Submitted,

s/ E. Bryan Nichols

H. Thomas Wells, Jr.
Bar Number: WEL004
twells@maynardcooper.com
John A. Earnhardt
Bar Number: EAR006
jearnhardt@maynardcooper.com
E. Bryan Nichols
Bar Number: NIC036
bnichols@maynardcooper.com

OF COUNSEL:

MAYNARD, COOPER & GALE, P.C.
1901 Sixth Avenue North
Suite 2400
Birmingham, Alabama 35203
Telephone: (205) 254-1000
Facsimile: (205) 254-1999

John C. Berghoff Jr
Mark R. Ter Molen
Matthew C. Sostrin
Admitted Pro Hac Vice

MAYER, BROWN, ROWE & MAW, LLP
71 S. Wacker Drive
Chicago, Illinois 60606

Attorneys for Defendant
Pactiv Corporation

CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

COUNSEL FOR DEFENDANTS LOUISIANA-PACIFIC CORPORATION

Dennis R. Bailey
R. Austin Huffaker
Rushton, Stakely, Johnston & Garrett
P. O. Box 270
Montgomery, AL 36101

COUNSEL FOR PLAINTIFF

W. Eason Mitchell
Colon Law Firm
P. O. Box 866
Columbus, MS 39703

Gregory A. Cade
W. Lee Gresham III
Fred R. DeLeon
Environmental Litigation Group
3529 Seventh Avenue South
Birmingham, AL 35222

s/ E. Bryan Nichols

E. Bryan Nichols
1901 Sixth Avenue North
Suite 2400
Birmingham, Alabama 35203
Telephone: (205) 254-1184
Facsimile: (205) 254-1999
E-mail: bnichols@maynardcooper.com
Bar Number: NIC036